

Jeffrey A. Masoner
Vice President – Interconnection Services



Network Services
2107 Wilson Blvd., 11th Floor
Arlington, VA 22201

703/974-4610
703/974-0314
jeffrey.a.masoner@verizon.com

February 9, 2001

Kathleen L. Greenan, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Re: Requested Adoption Under the FCC Merger Conditions

Dear Ms. Greenan:

Verizon New England Inc., f/k/a New England Telephone and Telegraph Company, (“Verizon Maine”), has received your letter stating that, pursuant to paragraph 32 of the BA/GTE Merger Conditions (“Merger Conditions”), released by the FCC on June 16, 2000 in CC Docket No. 98-184, Network Plus, Inc. (“Network Plus”) wishes to provide services to customers in Verizon Maine’s service territory in the State of Maine by adopting the voluntarily negotiated terms of the Interconnection Agreement between Global NAPS (“GNAPS”) and Verizon New England Inc., f/k/a New England Telephone and Telegraph Company (“Verizon Vermont”) that was approved by the Vermont Public Service Board as an effective agreement in the State of Vermont in Docket No. 6151, as such agreement exists on the date hereof after giving effect to operation of law (the “Verizon Vermont Terms”)¹.

I understand that Network Plus has a copy of the Verizon Vermont Terms which, in any case, are attached hereto as Appendix 1. Except with respect to Vermont state-specific pricing provisions, performance measures provisions, provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252, provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1), and any provisions not required by Section 251(c) of the Telecommunications Act of 1996 (the “Act”) (including but not limited to any reciprocal compensation provisions which are also excluded as state-specific pricing provisions and, in any case, are not available for adoption under the Merger Conditions) contained in the GNAPS/Verizon Vermont agreement, Verizon Maine does not oppose Network Plus’s

¹ These “agreements” are not agreements in the generally accepted understanding of that term. Verizon Vermont was required to accept these agreements, which were required to reflect then-effective FCC rules and other applicable law.

adoption of the Verizon Vermont Terms at this time. However, please note the following with respect to Network Plus's adoption of the Verizon Vermont Terms.

1. By Network Plus's countersignature on this letter, Network Plus hereby represents and agrees to the following three points:

(A) Network Plus adopts in the service territory of Verizon Maine the Verizon Vermont Terms of the GNAPS/Verizon Vermont agreement, and in applying the Verizon Vermont Terms, agrees that Network Plus shall be substituted in place of GNAPS in the Verizon Vermont Terms wherever appropriate.

(B) Network Plus requests that notice to Network Plus as may be required or permitted under the Verizon Vermont Terms shall be provided as follows:

To: Lisa Korner
Network Plus, Inc.
41 Pacella Park Drive
Randolph, MA 02368
Telephone number: 781-473-2977
FAX number: 781-473-3972

With a copy to:

Kathleen L. Greenan, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone number: 202-945-6922
FAX number: 202-424-7643

(C) Network Plus represents and warrants that it is a certified provider of local telecommunications service in the State of Maine, and that its adoption of the Verizon Vermont Terms will only cover services in the service territory of Verizon Maine in the State of Maine.

2. Network Plus's adoption of the Verizon Vermont Terms shall become effective upon the date that Verizon Maine files this letter with the Maine Public Utilities Commission (which Verizon Maine will promptly do upon my receipt of a copy of this letter, countersigned by Network Plus as to points (A), (B) and (C) of paragraph 1 above) and remain in effect no longer than the date the GNAPS/Verizon Vermont agreement terminates or expires. The GNAPS/Verizon Vermont agreement is currently scheduled to expire on November 1, 2001. Thus, the Verizon Vermont Terms adopted by Network Plus also shall terminate or expire on that date.

3. As the Verizon Vermont Terms are being adopted by Network Plus pursuant to the Merger Conditions, Verizon Maine does not provide the Verizon Vermont Terms to

Network Plus as either a voluntary or negotiated agreement. The filing and performance by Verizon Maine of the Verizon Vermont Terms does not in any way constitute a waiver by Verizon Maine of any position as to the Verizon Vermont Terms or a portion thereof. Nor does it constitute a waiver by Verizon Maine of any rights and remedies it may have to seek review of the Verizon Vermont Terms, or to seek review of any provisions included in these Verizon Vermont Terms as a result of Network Plus's election pursuant to the Merger Conditions.

4. Network Plus's adoption of the Verizon Vermont Terms pursuant to the Merger Conditions is subject to all of the provisions of such Merger Conditions. For example, state-specific pricing, state-specific performance measures, provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252, provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1), and provisions from the GNAPS/Verizon Vermont agreement that are not required pursuant to Section 251(c) of the Act shall not apply to Network Plus's adoption of the Verizon Vermont Terms in the State of Maine. In that regard, Verizon Maine's standard pricing schedule for interconnection agreements (as such schedule may be amended from time to time) (attached as Appendix 2 hereto) shall apply to Network Plus's adoption of the Verizon Vermont Terms. Network Plus should note that the aforementioned pricing schedule contains rates for certain services the terms for which are not subject to adoption under the Merger Conditions (e.g., number portability and reciprocal compensation). In an effort to expedite the adoption process, Verizon has not taken the time to delete such rates from the pricing schedule. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights under the Merger Conditions. Verizon will, nonetheless, if requested by Network Plus, work cooperatively with Network Plus to the extent necessary to identify any other provisions of the GNAPS/Verizon Vermont agreement including provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252, provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1), and provisions that are not required pursuant to Section 251(c) of the Act that are not subject to the MFN obligations of the Merger Conditions so that Network Plus, should it desire similar terms in Maine, may evaluate its options for obtaining such similar terms under applicable law.

As noted directly above, under the terms of paragraph 32 of the Merger Conditions, the MFN requirements in the Merger Conditions are exclusive of price terms, and prices applicable to interconnection arrangements are to be established on a state-specific basis. In addition, paragraph 32 of the Merger Conditions provides that Verizon is not obligated to permit a carrier to adopt any interconnection arrangement unless the arrangement "is consistent with the laws and regulatory requirements of the state for which the request is made[.]" Thus, by Network Plus's adoption of the GNAPS/Verizon Vermont agreement for Maine, Network Plus must accept the pricing terms provided by the Maine Public Utilities Commission, and it will not be entitled to terms and arrangements inconsistent with Maine law and policy.

In addition, the Merger Conditions' MFN obligation on which Network Plus relies extends only to interconnection arrangements, UNEs, or provisions of an interconnection agreement that are "subject to 47 U.S.C. § 251(c)" As you know, the obligation of local exchange carriers to pay one another reciprocal compensation for local traffic is found not in Section 251(c), but in Section 251(b), of the Act. On its face, therefore, the Merger Conditions' provision on which Network Plus relies does not extend to the reciprocal compensation provisions of Verizon Vermont's interconnection agreements or to any other provisions therein not required by Section 251(c).

Even if this provision of the Merger Conditions were to be misconstrued as encompassing not only items subject to Section 251(c), but also items subject to Section 251(b), it would still not obligate Verizon Maine to permit the cross-state adoption of compensation terms pertaining to Internet traffic. The FCC's February 1999 order expressly found that Internet traffic is not local. Accordingly, even if the GNAPS/Verizon Vermont agreement were mistakenly construed as containing a voluntary commitment to pay compensation on Internet traffic, that commitment would be entirely outside the scope of the requirements of Section 251, and therefore not subject to the cross-state MFN provisions of the Merger Conditions.

In addition, Network Plus's adoption of the Verizon Vermont Terms shall not obligate Verizon Maine to provide any interconnection arrangement or unbundled network element unless it is feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, Maine and with applicable collective bargaining agreements.

5. On January 25, 1999, the Supreme Court of the United States issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. The Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Verizon Vermont Terms may be void or unenforceable as a result of the Supreme Court's decision of January 25, 1999, the United States Eighth Circuit Court of Appeals' recent decision in Docket No. 96-3321 regarding the FCC's pricing rules, and any related appeals applicable to the FCC's new UNE rules or UNE pricing rules. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon Maine that any provision in the Verizon Vermont Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon Maine expressly reserves its full right to assert and pursue claims arising from or related to the Verizon Vermont Terms.

6. Verizon Maine reserves the right to deny Network Plus's adoption and/or application of the Verizon Vermont Terms, in whole or in part, at any time:

- (A) when the costs of providing the Verizon Vermont Terms to Network Plus are greater than the costs of providing them to GNAPS;

- (B) if the provision of the Verizon Vermont Terms to Network Plus is not technically feasible;
 - (C) if Verizon Maine otherwise is not obligated to permit such adoption and/or application under the Merger Conditions or under applicable law.
7. As noted above in paragraph 6, pursuant to Rule 809 of the FCC Regulations, the FCC gave ILECs the ability to deny 252(i) adoptions (and adoptions pursuant to the Merger Conditions, since the 252(i) rules also apply thereto) in those instances in which the cost of providing the service to the requesting carrier is higher than that incurred in serving the initial carrier or in which there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. Verizon Maine never intended for Internet traffic to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Whatever doubt any party may have had with respect to this issue was removed by the Declaratory Ruling that the Federal Communications Commission (the “FCC”) released on February 26, 1999 which, among other things, “conclude[d] . . . that ISP-bound traffic is non-local interstate traffic.”² The FCC also reaffirmed that “section 251(b)(5) of the Act and [the FCC] rules promulgated pursuant to that provision concern inter-carrier compensation for interconnected *local* telecommunications traffic.”³ Based on the FCC’s Declaratory Ruling (among other things), it is clear that Internet traffic is not local traffic. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation in which the cost of providing the service is not cost based. With this in mind (as well as the other bases noted in this letter), Verizon Maine opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Verizon Vermont Terms that might be interpreted to characterize traffic destined for the Internet as local traffic or requiring the payment of reciprocal compensation. However, Verizon Maine shall, in any case, comply with the requirements of applicable law with respect to this issue.

If, notwithstanding the foregoing, as well as the pricing provision exclusion set forth in the Merger Conditions and the exclusions described in paragraph 4 above, Network Plus nonetheless believes that the GNAPS/Verizon Vermont agreement somehow provides reciprocal compensation for ISP-bound traffic, it should note that, pursuant to section 5.7.2.3 of that agreement, Verizon Vermont would not be obligated to pay reciprocal compensation for that traffic. The GNAPS/Verizon Vermont agreement is essentially a clone of an agreement between GNAPS and Verizon New York Inc., doing business as Verizon New York, successor in interest to New York Telephone Company, formerly

² Declaratory Ruling in FCC CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (rel. February 26, 1999), fn. 87. The D.C. Circuit Court has recently asked the FCC to explain more fully its reasoning in arriving at this conclusion in the Declaratory Ruling, but it has not rejected the conclusion. The FCC, moreover, has publicly since reiterated the correctness of its conclusion.

³ *Id.* (emphasis in original).

doing business as Bell Atlantic – New York, for the state of New York. In the New York agreement, GNAPs and Verizon New York negotiated the following terms with respect to Internet traffic:

5.7.2.3. The Parties stipulate that they disagree as to whether traffic that originates on one Party's network and is transmitted to an Internet Service Provider ("ISP") connected to the other Party's network ("ISP Traffic") constitutes Local Traffic as defined herein, and the charges to be assessed in connection with such traffic. The issue of whether such traffic constitutes Local Traffic on which reciprocal compensation must [sic] be paid pursuant to the 1996 Act is presently before the FCC in CCB/CPD 97-30 and may be before a court of competent jurisdiction. The Parties agree that the decision of the FCC in that proceeding, or as [sic] such court, shall determine whether such traffic is Local Traffic (as defined herein) and the charges to be assessed in connection with ISP Traffic. If the FCC or such court determines that ISP Traffic is Local Traffic, as defined herein, or otherwise determines that ISP Traffic is subject to reciprocal compensation, it shall be compensated as Local Traffic under this Agreement unless another compensation scheme is required under such FCC or court determination. Until resolution of this issue, BA agrees to pay GNAPS Reciprocal Compensation for ISP traffic (without conceding that ISP Traffic constitutes Local Traffic or precluding BA's ability to seek appropriate court review of this issue) pursuant to the [New York Public Service] Commission's Order in Case 97-C-1275, dated March 19, 1998, as such Order may be modified, changed or reversed.

The same section 5.7.2.3 was copied into the GNAPS/Verizon Vermont agreement.

At the time the New York and Vermont agreements were signed, GNAPs and Verizon Vermont were awaiting the FCC's decision in CCB/CPD 97-30 on the Internet traffic issue. As is clear from section 5.7.2.3, the parties intended that Verizon Vermont would be unconditionally obligated to pay reciprocal compensation on Internet traffic only if the FCC (or a court of competent jurisdiction) were to determine that Internet traffic is local traffic. As you know, the FCC subsequently decided to the contrary, finding that Internet traffic is not local, but interstate and interexchange. Therefore, the conditional event in the GNAPS/Verizon Vermont agreement has occurred, with the result that Network Plus, in adopting the GNAPS/Verizon Vermont agreement Terms, is precluded from receiving reciprocal compensation on Internet traffic on this basis alone, as well as on the other bases described in this letter.

8. Should Network Plus attempt to apply the Verizon Vermont Terms in a manner that conflicts with paragraphs 3-7 above, Verizon Maine reserves its rights to seek appropriate legal and/or equitable relief.

Please arrange for a duly authorized representative of Network Plus to sign this letter in the space provided below and return it to the undersigned.

Sincerely,

VERIZON NEW ENGLAND INC.

Jeffrey A. Masoner
Vice President – Interconnection Services

Reviewed and countersigned as to points A, B, and C of paragraph 1:

NETWORK PLUS, INC.

By _____

Title _____

Attachments
2001-233VTagree - 2001-233MErates
Cc (w/out attachments): Hernando Londono